



The sole issue presented by the respondent for purposes of this appeal is whether claimant suffered a personal injury by accident arising out of and in the course of his employment with the respondent.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

The respondent in the instant case has raised the disputed issue of whether the claimant suffered an accidental injury that arose out of and in the course of his employment with the respondent. This is one of the issues which is enumerated in K.S.A. 44-534a(a)(2) and is considered jurisdictional and subject to review by the Appeals Board.

The Appeals Board, after reviewing the whole record, affirms in all respects Administrative Law Judge Shannon S. Krysl's Preliminary Hearing Order dated February 15, 1994, ordering Dr. Stein as the authorized physician for all treatment, tests, and referrals, for neck, back and extremities, except referrals to rehabilitation hospitals.

The first preliminary hearing was held in this case on May 6, 1993, before Administrative Law Judge John D. Clark. The claimant at that time was requesting medical treatment and temporary total disability benefits for alleged injuries that occurred in the latter part of February and the month of March of 1993. Claimant testified at that hearing that as a result of his work activities while employed by the respondent, he started having pain in his left shoulder and neck, and tingling in his hands. The Administrative Law Judge issued a Preliminary Hearing Order on May 7, 1993, ordering the respondent to pay temporary total disability benefits and to furnish medical treatment.

Since that initial preliminary hearing, Leonard A. Klafta, M.D. has performed an anterior cervical discectomy and Dr. Pirella-Cruz has performed a left carpal tunnel release on claimant. The claimant now comes forward requesting medical treatment for his low back and right knee.

The first time claimant makes complaints in reference to his low back is on October 26, 1993, to Dr. Klafta. At that time, he related such complaints to his work dating back to March of 1993. Dr. Klafta's medical records reflect that the claimant did not think much about his low back because his neck symptoms were so severe. After his neck problems were resolved, he began having considerable difficulty with his low back. The claimant also testified that the reason he had not previously mentioned his low back and knee problems to the treating physicians, was that his upper body was hurting him so much that he did not pay any attention to his other problems.

Respondent argues that the claimant's failure to complain about low back or knee injuries until October of 1993, is persuasive evidence that such injuries are not work connected.

At the conclusion of the preliminary hearing, Administrative Law Judge Krysl notified the parties that her Preliminary Hearing Order would be for respondent to provide additional medical care with Dr. Stein for all of the claimant's medical conditions including his low back and right knee. In making this decision, Administrative Law Judge Krysl specifically found the claimant is a credible witness. She goes on to find claimant's testimony that he did not complain about his low back and right knee because his upper body was hurting worse to be credible and persuasive.

The Appeals Board finds, for preliminary hearing purposes, the claimant has met his burden of proof and established that his low back and right knee complaints are work related.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Appeals Board that the Preliminary Hearing Order of by Administrative Law Judge Shannon S. Krysl dated February 15, 1994, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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